IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18/10/2004

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THE HONOURABLE MR. JUSTICE A.K.RAJAN

W.P.No. 17709 of 1997

1. P.K.Ravichandran
2. R.Thulasidass .. Petitioners

-Vs-

1. The Chairman
Tamil Nadu Electricity Board
800 Anna Salai
Chennai - 2
2. The Superintending Engineer
Coimbatore Electricity
Distribution Circle North
Tatabad
Coimbatore - 12
3. The Superintending Engineer
Nilagiri Electricity Distribution Circle
Ooty-1
The Nilgiris
4. O.P.Mohamed .. Respondents

For Petitioners : Mr.G.Rajan

For Respondents 1 to 3 : No appearance
Respondent 4 : given up

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records of the second respondent made in Memo No.SE/CEDC/N/Adm.2/A/F Sy.97 dated 20.10.1997 and the earlier administrative order passed by the first respondent in No.47/IR3/2 (Adm. Br (87-1 dated 18.9.1987), to quash the same and to direct the respondent to give promotion to the petitioners as Line Inspectors with retrospective effect, viz., with effect from August 1991.

:ORDER

This writ petition has been filed by the petitioners for issuance of writ of Certiorarified Mandamus to quash the order of the respondent refixing the seniority.

2. The petitioners and the fourth respondent are employed in the Electricity Board. They joined as Helpers and later on, they were promoted as Wiremen and subsequently, as Linemen. The qualification that was prescribed in the relevant period was five years experience with S.S.L.C. pass. Since the petitioners fulfilled the qualification, they were promoted as Linemen on 24.12.1986. Subsequently, the fourth respondent was promoted as Lineman in the year 1988. Thereafter, the second respondent published a seniority list for the post of Lineman as on 01.01.1989 as per which, the petitioners were placed at serial Nos.157 and 163 respectively and the fourth respondent was placed at Serial No.227. When that be the case, the seniority list was revised in view of the issuance of Board Proceedings in B.P.M.S.No.30 dated 26.3.1987 relaxing the qualification for promotion to the post of Lineman from Wireman as per which, the fourth respondent, who became Line Man in the year 1988, was placed in Serial No.145 whereas the petitioners were placed in Serial Nos.266 and 272 respectively. This was challenged in W.P.No.13318 of 1991 wherein this Court passed an order dated 02.7.1997 directing the first respondent to look into the matter with regard to the seniority of the petitioners therein on merits and as per the Rules and Regulations that were in force at the relevant time and to pass appropriate orders. The matter was again considered by the respondent-authorities and the respondentauthorities once again issued the very same seniority list and based on the said list, the fourth respondent was promoted as Line Inspector in the year 1991 and thereafter, promoted as Foreman in the year 1994 whereas the petitioners were promoted as Line Inspector only on 12.11.19 93. The first petitioner was promoted as Foreman on 28.9.2001 and the second petitioner was promoted as Foreman in the month of May 200 2. The Petitioners challenges the revision of seniority list, which was challenged earlier in W.P.No.13318 of 1991, and the subsequent promotion from the cadre of Lineman to Line Inspector as well as the promotion to the post of Foreman.

3. Heard the learned counsel for the petitioners and perused the affidavit filed in support of the petition. None appears for the Electricity Board.

4. Originally, there were three respondents but now two of them have already retired from service and one employee alone is now figuring as fourth respondent. Though notice has been served, it is seen that the fourth respondent is dead and hence, the petition against him has been given up.

5. The learned counsel for the petitioners, in support of his contention, relied on the judgment of the Supreme Court in A.JANARDHANA vs. UNION OF INDIA AND OTHERS ((1983) 3 SCC 601) wherein Their Lordships have held:

"It is an extremely undesirable, unjust and inequitable situation emerging in service jurisprudence from precedents, namely, that a person already rendering service as a promotee has to go down below a person who comes into service decades after the promotee enters the service. The Court, therefore, emphasised that it is the time to clearly initiate a proposition that a direct recruit who comes into service after the promotee was already unconditionally and without reservation promoted and whose promotion is not shown to be

invalid or illegal according to relevant statutory or non-statutory rules should not be permitted by any principle of seniority to score a march over a promotee because that itself being arbitrary would be violative of Articles 1 4 and 16."

6. Admittedly, the petitioners were promoted as Lineman on 24.12.198 6 and the fourth respondent was promoted as Lineman two years subsequent to the promotion of the petitioners, i.e., only in the year 1988. Thereafter, the seniority was fixed. It is seen that the petitioners were much above the fourth respondent in the original seniority list. Therefore, the seniority of the petitioners cannot be altered merely based on the Board Proceedings in B.P.M.S.No.30 dated 26.3.19 87 relaxing the educational qualification retrospectively. The relaxation of Rule will be useful only in subsequent promotions. Promotions already made in the year 1986 cannot be superseded by subsequent relaxation of rules and subsequent promotions. A person promoted to a higher post according to the rules gets the right to hold that post and also seniority only from the date of such promotion. Therefore, the original seniority list published before the issuance of Board Proceedings in B.P.M.S.No.30 dated 26.3.1987, viz., fixing the petitioners at Serial Nos.157 and 163 respectively and the fourth respondent as 227, cannot be altered by reason of the issuance of the above said subsequent Board Proceedings. Therefore, the revision of seniority on the basis of the Board Proceedings in B.P.M.S.No.30 dated 2 6.3.1987 placing the fourth respondent in Serial No. 145 and the petitioners at Serial Nos.266 and 272 respectively is not legally sustainable. A vested right cannot be divested from the petitioners. Therefore, revision of seniority of the petitioner vis-a-vis the fourth respondent is not in accordance with law and Rules. In view of the judgment of the Supreme Court relied on by the learned counsel for the petitioners, revision of seniority has to be set aside, and accordingly, it is set aside.

7. Admittedly, the fourth respondent was promoted as Line Inspector in the year 1991. Therefore, the petitioners are entitled to be promoted on the date when his junior, viz., fourth respondent, was promoted. Similarly, they are also entitled for promotion from Line Inspector to Foreman on the date when the fourth respondent was promoted. Therefore, the respondent authorities are directed to give promotion to the petitioners as stated above and they shall be deemed to have been promoted on the date when the fourth respondent was promoted. They are also entitled to get all the monetary benefits in the posts of Line Inspector as well as Foreman.

8. In the result, this writ petition is ordered accordingly. No costs.

Index : Yes
Internet : Yes

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